

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Civil Action No.

AMBER D. NOEL,

Defendant.

COMPLAINT IN MORTGAGE FORECLOSURE AND FOR DEFICIENCY JUDGMENT

The United States of America, a sovereign corporation by and through its counsel David J. Hickton, United States Attorney in and for the Western District of Pennsylvania, and Bernstein Law Firm, P.C., private counsel to the United States of America, for its Complaint alleges:

1. That this Court has jurisdiction under the provisions of 28 U.S.C. §1345.
2. That the Defendant, Amber D. Noel (hereinafter "Defendant"), resides at 224 Barks Hill Road, Creekside, PA 15732.
3. That on or about June 30, 2006, the United States of America acting through the Rural Housing Service, (hereinafter "Plaintiff"), lent to said Defendant, the sum of \$60,867.00, bearing interest at the rate of 5.75% per annum payable in monthly installments as evidenced by a Promissory Note dated June 30, 2006 executed by Amber D. Noel. A true and correct copy of the Note is attached hereto, marked Exhibit "A," and made a part hereof as if set forth in its entirety at this point.
4. That the Defendant, for the purpose of securing the Plaintiff against loss, did execute and acknowledge to the Plaintiff, on or about June 30, 2006, a Real Estate Mortgage. Said Mortgage further

provided in its terms that upon default in the payment of any installment due under the Mortgage, the entire indebtedness shall, at the option of the obligee, its successors and assigns, become immediately due and payable. A true and correct copy of the Real Estate Mortgage is attached hereto, marked Exhibit "B," and made a part hereof as if set forth in its entirety at this point.

5. That the Real Estate Mortgage was duly recorded on June 30, 2006, with the Office of the Recorder of Deeds, Indiana County, Pennsylvania, at Mortgage Book Volume 1599, Page 302.

6. The real property that is subject to the Mortgage is known as 89 4th Street, Ernest, PA 15739.

7. That during the course of their loan, the Defendant's monthly mortgage payments were subsidized by the Plaintiff. Pursuant to 42 U.S.C. §1490(a) and the Real Estate Mortgage, any subsidy received by the Defendant on loans received after June 30, 2006, is subject to recapture upon disposition of the property. The amount of the subsidy that may be due is set forth in the due and owing paragraph of this Complaint.

8. That the Plaintiff is the owner and holder of the Promissory Note and Real Estate Mortgage.

9. That because of the breaches of the provisions, and conditions of the Promissory Note and Real Estate Mortgage, the Plaintiff paid \$301.09 on the mortgaged premises and charged the sum to the account of the Defendant.

10. To the best of Plaintiff's knowledge and belief, the Defendant is the current record owner of the mortgaged premises.

11. Defendant is in default on the Note and Mortgage for failure to make payments of principal and interest as required by the Promissory Note when due.

12. As a result of this default, Plaintiff accelerated the balance due under the Note and Mortgage and hereby elects to declare the entire amount of the indebtedness of the Promissory Note and Real Estate Mortgage immediately due and payable.

13. Plaintiff sent to Defendant a Notice of Intention to Foreclose dated December 8, 2010, by regular and certified mail to her last known address and the address of the subject property. A true and correct copy of the aforesaid Notice is attached hereto, marked Exhibit "C" and made a part hereof.

14. That there is now fully due and owing the Plaintiff on the Promissory Note and Real Estate Mortgage the following sums:

(a) Principal and advances	\$ 54,617.12
(b) Interest through 3/9/11	\$ 2,452.18
(c) Interest from 3/10/11 to 8/31/11 at the daily rate of \$8.6398	\$ 1,511.97
(d) Interest Credit Subject to Recapture	\$ 4,230.63
(d) Attorney fees	\$ 950.00
(e) Penalty	\$ 301.09
TOTAL	\$ 64,062.99

together with interest at 5.75% per annum to the date of judgment, plus interest from the date of judgment at the legal rate, reasonable attorneys' fees and collection costs.

15. That Plaintiff is entitled to collect its reasonable attorneys' fees, which will amount to \$950.00 and increase depending on the extent of litigation required.

16. No other action has been brought at law or in equity, to enforce the provisions of the aforesaid Promissory Note and Real Estate Mortgage, and all conditions precedent to the bringing of the action have been performed or have occurred. The Plaintiff has complied with the requirements of 7 C.F.R. 3550.207.

COUNT ONE
MORTGAGE FORECLOSURE

17. Paragraphs 1-16 are incorporated by reference as if fully set forth herein.

18. Plaintiff's lien is prior and superior to any other liens or claims against the Property.

19. As a result of the default of Defendant, Plaintiff is entitled to foreclosure of Defendant's interest in the property.

WHEREFORE, Plaintiff respectively prays for a judgment in mortgage foreclosure against the Defendant, Amber D. Noel, in the amount of the accelerated balances set forth above, together with reasonable attorneys' fees and costs of this suit, and for a judicial sale of the Property.

COUNT TWO
DEFICIENCY JUDGMENT

20. Paragraphs 1-19 are incorporated by reference as if fully set forth herein.

21. Plaintiff is entitled to an *in personam* judgment against Defendant, Amber D. Noel, for the balance due Plaintiff on the Note as set forth above.

22. Plaintiff is entitled to a deficiency judgment for the remaining balance due Plaintiff on the Note after deduction of monies, if any, recovered from the sale of the Property.

WHEREFORE, Plaintiff respectively prays for an *in personam* judgment against the Defendant, Amber D. Noel, in the amount of the accelerated balances set forth above, together with reasonable attorneys' fees and costs of suit, and for a deficiency judgment after deduction of monies, if any, received from the sale of the Property.

SUMMARY OF REQUESTED RELIEF

WHEREFORE, Plaintiff respectfully prays for:

(a) A judgment in mortgage foreclosure against the Defendant, Amber D. Noel, in the amount of the accelerated balance set forth above, together with reasonable attorneys' fees and costs of this suit, and for a judicial sale of the Property;

(b) An *in personam* judgment against the Defendant, Amber D. Noel, in the amount of the accelerated balances set forth above, together with reasonable attorneys' fees and costs of suit, and for a deficiency judgment after deduction of monies, if any, received from the sale of the Property; and

(c) For such other and further relief, both legal and equitable, as this Honorable Court deems just and proper.

Dated at Pittsburgh, Pennsylvania, this 1st day of Sept, 2011.

Respectfully submitted,

UNITED STATES OF AMERICA
DAVID J. HICKTON
UNITED STATES ATTORNEY
WESTERN DISTRICT OF PENNSYLVANIA

By: 

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